

IT IS ORDERED

Date Entered on Docket: January 29, 2019



The Honorable David T. Thuma  
United States Bankruptcy Judge

---

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW MEXICO

In re:

LOIS WILLIAMS

Case No. 7-18-12373-TA

Debtor.

**ORDER RESULTING FROM HEARING ON MOTION FOR RELIEF FROM  
AUTOMATIC STAY AND ABANDONMENT OF PROPERTY LOCATED AT  
2606 DESERT GARDEN LN SW ALBUQUERQUE, NM 87105**

This matter came before the Court on the Motion for Relief from Automatic Stay for the Abandonment of Property to SunTrust Bank, filed on November 2, 2018, (DOC 15) (the “Motion”) by SunTrust Bank, and the Debtor’s Response to the Motion filed on December 3, 2018 (Doc 18). The matter was brought before the Court at a Preliminary Hearing held on January 7, 2019 at 9:00 AM The Court, having reviewed the record and the Motion, and being otherwise sufficiently informed, FINDS:

(a) On November 2, 2018, SunTrust Bank served the Motion and a notice of the Motion (the “Notice”) on Philip J. Montoya (the “Trustee”) by use of the Court’s case management and electronic filing system for the transmission of notices, as authorized by Fed.R.Civ.P. 5(b)(3) and NM LBR 9036-1, and on the Pro Se Debtor Lois Williams, by United States first class mail, in accordance with Bankruptcy Rules 7004 and 9014.

(b) The Motion relates to the property located at 2606 Desert Garden LN SW Albuquerque, NM 87105, more fully described as:

LOT NUMBERED TWENTY-TWO (22) IN BLOCK NUMBERED SIX (6) OF UNIT NO. 2, VALLEY GARDENS SOUTH, A SUBDIVISION WITHIN THE CITY OF ALBUQUERQUE, NEW MEXICO AS THE SAME IS SHOWN AND DESIGNATED ON THE PLAT OF SAID SUBDIVISION, FILED IN THE OFFICE OF THE COUNTY CLERK OF BERNALILLO COUNTY, NEW MEXICO ON APRIL 28, 1964, IN MAP BOOK D3, PAGE 97.

including any improvements, fixtures, and attachments, such as, but not limited to, mobile homes (the “Property”). If there is a conflict between the legal description and the street address, the legal description shall control.

(c) The Notice provided for an objection deadline of 21 days from the date of service of the Notice, to which three days was added pursuant to Bankruptcy Rule 9006(f);

(d) The Notice was sufficient in form and content;

(e) The objection deadline expired on November 26, 2018;

(f) On December 3, 2018 the Debtor filed a response to the Motion. No other party in interest filed an objection to the Motion;

(g) The Motion is well taken and should be granted as provided herein; and

(h) By submitting this Order to the Court for entry, the undersigned counsel for SunTrust Bank certifies under penalty of perjury that, on the date this Order was presented Rose L. Brand & Associates, P.C. searched the data banks of the Department of Defense Manpower Data Center (“DMDC”), and found that the DMDC does not possess any information indicating that the Debtor is currently on active military duty of the United States.

IT IS THEREFORE ORDERED:

1. Pursuant to 11 U.S.C. §362(d), SunTrust Bank and any and all holders of liens against the Property, of any lien priority, are hereby are granted relief from the automatic stay:

(a) To enforce its rights in the Property, including foreclosure of liens and a foreclosure sale, under the terms of any prepetition notes, mortgages, security agreements, and/or other agreements to which Debtor is a party, to the extent permitted by applicable non-bankruptcy law, such as by commencing or proceeding with appropriate action against the Debtor or the Property, or both, in any court of competent jurisdiction; and

(b) To exercise any other right or remedy available to it under law or equity with respect to the Property.

2. The Trustee is deemed to have abandoned the Property from the estate pursuant to 11 U.S.C. §554 as of the date of entry of this Order, and the Property therefore no longer is property of the estate. As a result, SunTrust Bank need not name the Trustee as a defendant in any state court action it may pursue to foreclosure liens against the Property and need not notify the Trustee of any sale of the Property.

3. The automatic stay is not modified to permit any act to collect any deficiency or other obligation as a personal liability of the Debtor, in the event that a discharge order is entered. The Debtor can be named as a defendant in litigation to obtain judgment or to repossess the Property in accordance with applicable non-bankruptcy law, pursuant to any discharge order entered.

4. This Order does not waive SunTrust Bank's claim against the estate for any deficiency owed by the Debtor after any foreclosure sale or other disposition of the Property. SunTrust Bank may file an amended proof of claim in this bankruptcy case within thirty (30) days after a foreclosure sale of the Property, should it claim that Debtor owe any amount after the sale of the Property.

5. This Order shall continue in full force and effect if this case is dismissed or converted to a case under another chapter of the Bankruptcy Code.

6. This order is effective and enforceable upon entry. The 14-day stay requirement of Fed.R.Bankr.P. 4001(a)(3) is waived.

7. SunTrust Bank is further granted relief from the stay to engage in loan modification discussions or negotiations or other settlement discussions with the Debtor and to enter into a loan modification with the Debtor.

XXX END OF ORDER XXX

RESPECTFULLY SUBMITTED:

ROSE L. BRAND & ASSOCIATES, P.C.

By: /s/Andrew P. Yarrington

ANDREW YARRINGTON

Attorney for SunTrust Bank

7430 Washington NE

Albuquerque, NM 87109

Telephone: (505) 833-3036

Andrew.Yarrington@roselbrand.com

Copied to:

Lois Williams

Debtor, Pro Se

2606 Desert Garden Ln SW

Albuquerque, NM 87105

Philip J. Montoya

Chapter 7 Trustee

1122 Central Ave SW Ste #3

Albuquerque, NM 87102

Telephone: (505) 244-1152